

EXHIBIT E

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Case No.: 19-cv-00805-TSZ

tinyBuild LLC,

Plaintiff/Counterclaim Defendant,

v.

Nival International Limited

Defendant/Counterclaim Plaintiff.

**NIVAL INTERNATIONAL
LIMITED'S
OBJECTIONS AND RESPONSES
TO TINYBUILD LLC'S
INTERROGATORIES AND
REQUESTS FOR DOCUMENTS**

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INTERROGATORIES

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Defendant Nival International Limited (“Nival”) hereby responds to Plaintiff tinyBuild LLC’s (“TinyBuild”) First Interrogatories (the “Interrogatories”). Nival’s failure to object to a particular Interrogatory or willingness to respond to an Interrogatory is not, and shall not be construed as, an admission of the relevance or admissibility into evidence of any such response or that the purported factual premise for any Interrogatory is valid or accurate. The inadvertent production of any privileged information shall not be deemed to be a waiver of any applicable privilege with respect to such response or with respect to any other response.

The responses herein are made subject to all appropriate objections (including, but not limited to, objections as to confidentiality, relevancy, propriety and admissibility), which would require the exclusion of any statement contained herein if answered by a witness present and testifying in court. All such objections and grounds are reserved and may be interposed at the time of trial or otherwise.

Nival has not yet completed its investigation of the facts relating to this action; has not yet interviewed all witnesses in this action; has not yet completed its discovery in this action; and has not yet completed its preparation for trial. Consequently, the following responses are given without prejudice to Nival’s right to produce, at time of trial, subsequently discovered evidence relating to proof of presently known material facts and to produce all evidence, whenever discovered, relating to the proof of subsequently discovered material facts.

All the responses contained herein are based only upon such information and documents that are presently available to and specifically known to Nival and the responses disclose only those contentions which presently occur to Nival. As discovery proceeds, witnesses, facts and evidence may be discovered that are not set forth herein, but which may have been responsive to a discovery request.

Furthermore, facts and evidence now known may be imperfectly understood and, accordingly, such facts and evidence may, in good faith, not be included in the following responses. It is anticipated that further discovery, independent investigation, legal research and analysis will result in additional facts, added meaning to known facts, and entirely new factual conclusions and legal contentions, all of which may lead to substantial additions to or modifications to the responses set forth herein. Accordingly, the following responses are given without prejudice to Nival's right to make changes to any and all answers herein as additional facts are ascertained, analyses are made, research is performed and contentions made. Notwithstanding the foregoing, the responses contained herein are made in a good faith effort to supply as much factual information and as much specificity as is presently known and responsive to the request. Nonetheless, Nival assumes no obligation to voluntarily supplement or amend these responses to reflect witnesses, facts or evidence following the service of these responses

Specific Objections and Responses to Interrogatories

Interrogatory No. 1: Identify all persons with knowledge of the facts alleged in the Complaint, including but not limited to each individual who performed work on the "Product," as defined in the Agreement, and for each such person identify the subject(s) of their knowledge.

Objections: Nival objects to this Interrogatory on the basis that it calls for a conclusion of law. Nival objects to this Interrogatory to the extent that it seeks information that is protected from discovery or disclosure by virtue of the right to privacy or which constitutes confidential information, proprietary information, or trade secrets, or which are otherwise protected from disclosure or discovery pursuant to case law, statute, regulation or order and will not produce any such

1 information absent an appropriate protective order governing the use of
2 confidential material in this litigation is entered by the Court. Without waiving,
3 and subject to, the foregoing objections, Nival responds as follows:

4 Response:

5 1. Alex Nichiporchik, a co-founder of Plaintiff tinyBuild LLC
6 (“tinyBuild”) and a manager/governor of tinyBuild, is expected to have
7 information regarding communications between the parties, the performance of
8 both parties under the agreement, and payments made under the agreement.
9 Address: c/o Garvey Schubert Barer P.C., 1191 Second Ave., Seattle, WA 98101.

10 2. Andrei Podoprighora, an employee of Plaintiff tinyBuild, is expected to
11 have information regarding communications between the parties and the
12 performance of both parties under the agreement. Address: c/o Garvey Schubert
13 Barer P.C., 1191 Second Ave., Seattle, WA 98101

14 3. Luke Burtis a co-founder of Plaintiff tinyBuild and a
15 manager/governor of tinyBuild, is expected to have information regarding
16 communications between the parties, the performance of both parties under the
17 agreement, and payments made under the agreement. Address: c/o Garvey
18 Schubert Barer P.C., 1191 Second Ave., Seattle, WA 98101

19 4. Antonio Assenza, an employee of Plaintiff tinyBuild, is expected to
20 have information regarding communications between the parties and the
21 performance of both parties under the agreement. Address: c/o Garvey Schubert
22 Barer P.C., 1191 Second Ave., Seattle, WA 98101.

23 5. Sergey Orlovskiy, founder and CEO of Nival, has information
24 regarding communications between the parties, the performance of both parties
25 under the agreement, and payments made under the agreement. Address: c/o
26 Boston Law Group, PC, 825 Beacon Street, Ste. 20, Newton Centre, MA 02459.

6. Ilya Yakimov, CFO of Nival, has information regarding communications between the parties, the performance of both parties under the agreement, and payments made under the agreement. Address: c/o Boston Law Group, PC, 825 Beacon Street, Ste. 20, Newton Centre, MA 02459.

7. Alexander Myasishev, employee of Nival, has information regarding communications between the parties, the performance of both parties under the agreement. Address: c/o Boston Law Group, PC, 825 Beacon Street, Ste. 20, Newton Centre, MA 02459

8. Savvas Petras, independent video game designer who was contracted to design the game at issue in the agreement, has information regarding the performance of the parties under the agreement. Address: Steliou Kotiadi 7, 3rd Floor, Greece, 85100.

Interrogatory No. 2: Identify all persons who have been granted access to any source code related to the “Product,” as defined in the Agreement.

Objections: Nival objects to this request to the extent that it seeks information or documents protected by any privilege, including, without limitation, the attorney-client privilege or the attorney work product doctrine. Nival objects to this Interrogatory to the extent that it seeks information that is protected from discovery or disclosure by virtue of the right to privacy or which constitutes confidential information, proprietary information, or trade secrets, or which are otherwise protected from disclosure or discovery pursuant to case law, statute, regulation or order and will not produce any such information absent an appropriate protective order governing the use of confidential material in this litigation is entered by the Court. Nival objects to this request in its entirety on the basis that it seeks documents or information that are neither relevant to the subject matter of this action nor calculated to lead to the discovery of admissible evidence.

1 Nival objects to this request on the basis that it is overbroad. Nival objects to this
 2 request on the basis that it seeks information or documents that are within the
 3 custody, control or possession of the propounding party.

4
 5 **Interrogatory No. 3:** With respect to every person identified in response
 6 to Interrogatory No. 2, identify the circumstances by which they were given access
 7 to Product source code, and the reason why they were given such access.

8 **Objections:** Nival objects to this request to the extent that it seeks
 9 information or documents protected by any privilege, including, without limitation,
 10 the attorney-client privilege or the attorney work product doctrine. Nival objects to
 11 this Interrogatory to the extent that it seeks information that is protected from
 12 discovery or disclosure by virtue of the right to privacy or which constitutes
 13 confidential information, proprietary information, or trade secrets, or which are
 14 otherwise protected from disclosure or discovery pursuant to case law, statute,
 15 regulation or order and will not produce any such information absent an
 16 appropriate protective order governing the use of confidential material in this
 17 litigation is entered by the Court. Nival objects to this request in its entirety on the
 18 basis that it seeks documents or information that are neither relevant to the subject
 19 matter of this action nor calculated to lead to the discovery of admissible evidence.
 20 Nival objects to this request on the basis that it is overbroad. Nival objects to this
 21 request on the basis that it seeks information or documents that are within the
 22 custody, control or possession of the propounding party.

23
 24 As to all objections:

25
 26 


27 Matthew Shayefar, Esq.

9-9-19

28 Date

Party Verification

I, on behalf of Nival International Limited, have read the foregoing answers and responses to tinyBuild LLC's First Interrogatories and believe them to be true and correct.


By: Tanya Labinova

8th September 2019
Date

REQUESTS FOR PRODUCTION OF DOCUMENTS

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Defendant Nival International Limited (“Nival”), by and through its undersigned counsel, hereby responds to Plaintiff tinyBuild LLC’s (“tinyBuild”) First Requests for Production of Documents (the “Requests”). Nival’s failure to object to a particular Request or willingness to respond to a Request is not, and shall not be construed as, an admission of the relevance or admissibility into evidence of any such response or that the purported factual premise for any Request is valid or accurate. The inadvertent production of any privileged information shall not be deemed to be a waiver of any applicable privilege with respect to such response or with respect to any other response.

Each response is subject to all appropriate objections (including, but not limited to, objections as to confidentiality, relevancy, propriety, and admissibility), which would require the exclusion of any document produced herewith if submitted at trial. All such objections and grounds are reserved and may be interposed at the time of trial or otherwise.

Nival has not yet completed its investigation of the facts relating to this action; has not yet interviewed all witnesses in this action; has not yet completed its discovery in this action; and has not yet completed its preparation for trial. Consequently, the following responses are given without prejudice to Nival’s right to produce, at time of trial, subsequently discovered documents relating to proof of presently known material facts and to produce all evidence, whenever discovered, relating to the proof of subsequently discovered material facts.

All the responses contained herein are based only upon such information and documents that are presently available to and specifically known to Nival and the responses disclose only those contentions which presently occur to Nival. As discovery proceeds, documents may be discovered that are not set forth herein, but

1 which may have been responsive to a discovery request. Furthermore, facts and
 2 evidence now known may be imperfectly understood and, accordingly, documents
 3 may, in good faith, not be included in the following responses. It is anticipated
 4 that further discovery, independent investigation, legal research and analysis will
 5 result in additional facts, added meaning to known facts, and entirely new factual
 6 conclusions and legal contentions, all of which may lead to substantial additions to
 7 or modifications to the responses set forth herein and documents produced
 8 herewith. Accordingly, the following responses are given without prejudice to
 9 Nival's right to make changes to any and all answers herein as additional facts are
 10 ascertained, analyses are made, research is performed and contentions made.
 11 Notwithstanding the foregoing, the responses contained herein are made in a good
 12 faith effort to supply as much factual information and as much specificity as is
 13 presently known and responsive to the Request.

14
 15 **Request for Production No. 1:** Produce all documents identified or
 16 referenced in response to any of the above interrogatories.

17 **Response:** No documents were referenced or identified in response to any
 18 of the above interrogatories. Accordingly, no documents can be produced. Nival
 19 reserves the right to lodge objections to this request if at any time the request could
 20 possibly refer to any documents.

21
 22 **Request for Production No. 2:** Produce all documents related to the drafting
 23 and execution of the Agreement, including drafts and communications about the
 24 Agreement's terms.

25 **Objections and Response:** Nival objects to this request to the extent
 26 that it seeks information or documents protected by any privilege, including,
 27 without limitation, the attorney-client privilege or the attorney work product
 28

1 doctrine. Nival objects to this request to the extent that it seeks information or
2 documents that are protected from discovery or disclosure by virtue of the right to
3 privacy, constitute confidential information, proprietary information, or trade
4 secrets, or which are otherwise protected from discovery or disclosure pursuant to
5 case law, statute, regulation or order and will not produce any such information
6 absent an appropriate protective order governing the use of confidential material in
7 this litigation is entered by the Court. Nival objects to this request to the extent
8 that it seeks documents or information that are neither relevant to the subject
9 matter of this action nor calculated to lead to the discovery of admissible evidence.
10 Nival objects to this request on the basis that it is overbroad. Nival objects to this
11 Interrogatory on the basis that it calls for a conclusion of law. Nival objects to this
12 Request on the basis that it is ambiguous.

13 Without waiving, and subject to, the foregoing objections, Nival will
14 produce copies of relevant and non-privileged responsive documents in its
15 possession, custody or control.

16
17 **Request for Production No. 3:** Produce all communications between You
18 and Savvas Petras.

19 **Objections:** Nival objects to this request to the extent that it seeks
20 information or documents that are protected from discovery or disclosure by virtue
21 of the right to privacy, constitute confidential information, proprietary information,
22 or trade secrets, or which are otherwise protected from discovery or disclosure
23 pursuant to case law, statute, regulation or order and will not produce any such
24 information absent an appropriate protective order governing the use of
25 confidential material in this litigation is entered by the Court. Nival objects to this
26 request to the extent that it seeks documents or information that are neither relevant
27
28

1 to the subject matter of this action nor calculated to lead to the discovery of
2 admissible evidence. Nival objects to this request on the basis that it is overbroad.

3 **Request for Production No. 4:** Produce all financial records and other
4 documents reflecting costs or expenses incurred by Nival in connection with the
5 Product, as defined in the Agreement.

6 **Objections:** Nival objects to this request to the extent that it seeks
7 information or documents protected by any privilege, including, without limitation,
8 the attorney-client privilege or the attorney work product doctrine. Nival objects to
9 this request to the extent that it seeks information or documents that are protected
10 from discovery or disclosure by virtue of the right to privacy, constitute
11 confidential information, proprietary information, or trade secrets, or which are
12 otherwise protected from discovery or disclosure pursuant to case law, statute,
13 regulation or order and will not produce any such information absent an
14 appropriate protective order governing the use of confidential material in this
15 litigation is entered by the Court. Nival objects to this request to the extent that it
16 seeks documents or information that are neither relevant to the subject matter of
17 this action nor calculated to lead to the discovery of admissible evidence. Nival
18 objects to this request on the basis that it is overbroad. Nival objects to this request
19 on the basis that it is propounded for no reason except to harass and over-burden
20 Nival. Nival objects to this Request on the basis that it is ambiguous. Nival
21 objects to this Interrogatory on the basis that it calls for a conclusion of law.
22

23 **Request for Production No. 5:** Produce all communications between You
24 and any person related to the allegations in this lawsuit.

25 **Objections and Response:** Nival objects to this request to the extent
26 that it seeks information or documents protected by any privilege, including,
27 without limitation, the attorney-client privilege or the attorney work product
28

1 doctrine. Nival objects to this request to the extent that it seeks information or
 2 documents that are protected from discovery or disclosure by virtue of the right to
 3 privacy, constitute confidential information, proprietary information, or trade
 4 secrets, or which are otherwise protected from discovery or disclosure pursuant to
 5 case law, statute, regulation or order and will not produce any such information
 6 absent an appropriate protective order governing the use of confidential material in
 7 this litigation is entered by the Court. Nival objects to this request to the extent
 8 that it seeks documents or information that are neither relevant to the subject
 9 matter of this action nor calculated to lead to the discovery of admissible evidence.
 10 Nival objects to this request on the basis that it is overbroad. Nival objects to this
 11 Request on the basis that it is ambiguous. Nival objects to this Interrogatory on the
 12 basis that it calls for a conclusion of law.

13 Without waiving, and subject to, the foregoing objections, upon the entry of
 14 an appropriate protective order governing the use of confidential materials in this
 15 litigation, Nival will produce copies of relevant and non-privileged responsive
 16 documents in its possession, custody or control.

17
 18 **Request for Production No. 6:** Produce all communications with Nival
 19 employees or agents, including but not limited to emails and text messages, related
 20 to Nival's development of the Product, as defined in the Agreement.

21 **Objections:** Nival objects to this request to the extent that it seeks
 22 information or documents protected by any privilege, including, without limitation,
 23 the attorney-client privilege or the attorney work product doctrine. Nival objects to
 24 this request to the extent that it seeks information or documents that are protected
 25 from discovery or disclosure by virtue of the right to privacy, constitute
 26 confidential information, proprietary information, or trade secrets, or which are
 27 otherwise protected from discovery or disclosure pursuant to case law, statute,
 28

1 regulation or order and will not produce any such information absent an
2 appropriate protective order governing the use of confidential material in this
3 litigation is entered by the Court. Nival objects to this request to the extent that it
4 seeks documents or information that are neither relevant to the subject matter of
5 this action nor calculated to lead to the discovery of admissible evidence. Nival
6 objects to this request on the basis that it is overbroad. Nival objects to this request
7 on the basis that it is propounded for no reason except to harass and over-burden
8 Nival. Nival objects to this Interrogatory on the basis that it calls for a conclusion
9 of law. Nival objects to this Request on the basis that it is ambiguous.

10
11 **Request for Production No. 7:** Produce all communications with third
12 parties, including but not limited to emails and text messages, related to Nival's
13 development of the Product, as defined in the Agreement.

14 **Objections:** Nival objects to this request to the extent that it seeks
15 information or documents protected by any privilege, including, without limitation,
16 the attorney-client privilege or the attorney work product doctrine. Nival objects to
17 this request to the extent that it seeks information or documents that are protected
18 from discovery or disclosure by virtue of the right to privacy, constitute
19 confidential information, proprietary information, or trade secrets, or which are
20 otherwise protected from discovery or disclosure pursuant to case law, statute,
21 regulation or order and will not produce any such information absent an
22 appropriate protective order governing the use of confidential material in this
23 litigation is entered by the Court. Nival objects to this request to the extent that it
24 seeks documents or information that are neither relevant to the subject matter of
25 this action nor calculated to lead to the discovery of admissible evidence. Nival
26 objects to this request on the basis that it is overbroad. Nival objects to this request
27 on the basis that it is propounded for no reason except to harass and over-burden
28

1 Nival. Nival objects to this Interrogatory on the basis that it calls for a conclusion
2 of law. Nival objects to this Request on the basis that it is ambiguous.

3
4 **Request for Production No. 8:** Produce timesheets and any other data
5 recording time spent by Nival employees or agents developing the Product.

6 **Objections:** Nival objects to this request to the extent that it seeks
7 information or documents that are protected from discovery or disclosure by virtue
8 of the right to privacy, constitute confidential information, proprietary information,
9 or trade secrets, or which are otherwise protected from discovery or disclosure
10 pursuant to case law, statute, regulation or order and will not produce any such
11 information absent an appropriate protective order governing the use of
12 confidential material in this litigation is entered by the Court. Nival objects to this
13 request to the extent that it seeks documents or information that are neither relevant
14 to the subject matter of this action nor calculated to lead to the discovery of
15 admissible evidence. Nival objects to this request on the basis that it is overbroad.
16 Nival objects to this request on the basis that it is propounded for no reason except
17 to harass and over-burden Nival. Nival objects to this Interrogatory on the basis
18 that it calls for a conclusion of law. Nival objects to this Request on the basis that
19 it is ambiguous.

20
21 **Request for Production No. 9:** Produce balance sheets, income statements,
22 profit and loss statements, and any other corporate financial statements from
23 January 2018 through the present.

24 **Objections:** Nival objects to this request to the extent that it seeks
25 information or documents that are protected from discovery or disclosure by virtue
26 of the right to privacy, constitute confidential information, proprietary information,
27 or trade secrets, or which are otherwise protected from discovery or disclosure
28

1 pursuant to case law, statute, regulation or order and will not produce any such
2 information absent an appropriate protective order governing the use of
3 confidential material in this litigation is entered by the Court. Nival objects to this
4 request to the extent that it seeks documents or information that are neither relevant
5 to the subject matter of this action nor calculated to lead to the discovery of
6 admissible evidence. Nival objects to this request on the basis that it is overbroad.
7 Nival objects to this request on the basis that it is propounded for no reason except
8 to harass and over-burden Nival. Nival objects to this Request on the basis that it
9 is ambiguous.

10
11 **Request for Production No. 10:** Produce documents sufficient to
12 identify every company with which Nival has performed video game development
13 services, and each specific project Nival has worked on from January 1, 2018 to
14 the present.

15 **Objections:** Nival objects to this request to the extent that it seeks
16 information or documents that are protected from discovery or disclosure by virtue
17 of the right to privacy, constitute confidential information, proprietary information,
18 or trade secrets, or which are otherwise protected from discovery or disclosure
19 pursuant to case law, statute, regulation or order and will not produce any such
20 information absent an appropriate protective order governing the use of
21 confidential material in this litigation is entered by the Court. Nival objects to this
22 request to the extent that it seeks documents or information that are neither relevant
23 to the subject matter of this action nor calculated to lead to the discovery of
24 admissible evidence. Nival objects to this request on the basis that it is overbroad.
25 Nival objects to this request on the basis that it is propounded for no reason except
26 to harass and over-burden Nival. Nival objects to this Request on the basis that it
27 is ambiguous.

Request for Production No. 11: Produce all documents related to Nival's work on a purported Beta-stage Product, as defined in the Agreement.

Objections: Nival objects to this request to the extent that it seeks information or documents protected by any privilege, including, without limitation, the attorney-client privilege or the attorney work product doctrine. Nival objects to this request to the extent that it seeks information or documents that are protected from discovery or disclosure by virtue of the right to privacy, constitute confidential information, proprietary information, or trade secrets, or which are otherwise protected from discovery or disclosure pursuant to case law, statute, regulation or order and will not produce any such information absent an appropriate protective order governing the use of confidential material in this litigation is entered by the Court. Nival objects to this request to the extent that it seeks documents or information that are neither relevant to the subject matter of this action nor calculated to lead to the discovery of admissible evidence. Nival objects to this request on the basis that it is overbroad. Nival objects to this request on the basis that it is propounded for no reason except to harass and over-burden Nival. Nival objects to this Interrogatory on the basis that it calls for a conclusion of law. Nival objects to this Request on the basis that it is ambiguous.

Dated: September 9, 2019

/s/ Matthew Shayefar

Matthew Shayefar, Esq.

Certificate of Service

I hereby certify that on the date indicated below I electronically served the foregoing document via email on the persons identified below.

Dated: September 9, 2019 /s/ Matthew Shayefar

Service List:

Diana S. Breaux
Garvey Schubert Barer, P.C.
1191 Second Ave., 18th Floor
Seattle, WA 98101
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